



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1993

Ms. Isabel Treviño
Attorney at Law
1501 West Main Street
Rio Grande City, Texas 78582

OR93-289

Dear Ms. Treviño:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18948.

The Rio Grande City Consolidated Independent School District ("the school district") has received a request for the personnel file of a specific teacher employed by the school district. Specifically the requestor seeks:

personnel file of [the teacher] excepting medical records and transcripts[]

specifically: teacher service record, application, I-9 form, criminal background check, audit card.

You have submitted for our review 1) the employment application, 2) the criminal history check, 3) Form I-9, and 4) teacher service records.¹ You argue that the requested information is excepted under sections 3(a)(1) and 3(a)(2) of the Open Records Act.²

¹We note that the first part of the request seeks the teacher's personnel file, excepting medical records and transcripts. You have not submitted the personnel file to this office for our review. We assume that you will or have already released this information to the requestor. You may not, however, release any information which is confidential under law. V.T.C.S. art. 6251-17a, § 10(a), (f) (releasing confidential information is a misdemeanor).

You state that there is no audit card in the teacher's file. The Open Records Act does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983).

²Although you state that the information is excepted under section 3(a)(3), we infer from your arguments that you intend to raise sections 3(a)(1) and 3(a)(2). You do not argue that this information relates to any pending or anticipated litigation. See Open Records Decision No. 551 (1990) at 4 (information must relate to litigation that is pending or reasonably anticipated to be excepted under section 3(a)(3)). Accordingly we do not address whether section 3(a)(3) is applicable.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." In order for information to be brought within the common-law right of privacy under section 3(a)(1), the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Industrial Foundation, 540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4.

Section 3(a)(2) excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees, and further provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 3(a)(1). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (test to be applied in decision under section 3(a)(2) same as that delineated in *Industrial Foundation* for section 3(a)(1)). Therefore we will address section 3(a)(1) and section 3(a)(2) together.

You argue that the application for employment contains information that is "personal in nature"; that release of such application would have "a chilling effect" on the application process; and that therefore applicants would not disclose necessary information. Applications for employment are not intimate or embarrassing in nature and there is a legitimate public interest in the qualifications of employees of governmental bodies. Open Records Decision No. 455 (1987). It is well established that an applicant's educational training, names and addresses of former employers, dates of employment, kind of work, salary, reasons for leaving, names, occupation, addresses and telephone number of character references, job performances or abilities, names of friends or relatives

employed by the governmental body, birth dates, height, weight, marital status, and social security numbers are public information. *Id.* Information regarding certain illnesses or operations, however, is not public information and may be excepted. *Id.* at 9. For your convenience, we have marked the portion of the employment application that may be withheld because it reveals private medical information.

We note that section 3(a)(17) excepts public officers' and employees' home addresses and telephone numbers from required public disclosure in certain circumstances. Open Records Decision No. 530 (1989); *see also* V.T.C.S. art. 6252-17a, § 3A. If the teacher designated in a signed writing that he does not want his home address and telephone number released before this request for information was made, you may withhold his home address and home telephone number wherever they appear in the documents. We stress that if the teacher did not sign such a writing *before the date of this request*, he may not do so now for purposes of this request. Open Records Decision No. 530; V.T.C.S. art. 6252-17a, § 3A.

You argue that the criminal history check is used for internal purposes only and is not subject to disclosure. We have ruled that criminal history information received from the Texas Crime Information Center is available only to the subject of the search. Open Records Decision No. 565 (1990). The requestor here is not the subject of the search at issue. Therefore, you may withhold the crime history information from public disclosure under section 3(a)(1).

You contend that the teacher service records are excepted from disclosure because "they contain information regarding employees sick leave days, . . . number of days of employment, pay grade and information [] about their work history." The names, sex, ethnicity, salaries, titles, and dates of employment of public employees are specifically made public under section 6(2) of the Open Records Act. V.T.C.S. art. 6252-17a, § 6(2); Open Records Decision Nos. 139, 132 (1976). The service records do not contain any detailed information about the sick leave days and do not discuss the reasons the days were taken. They merely record the number of days earned and the number of days used. This type of information is neither highly embarrassing nor is it highly intimate. We have previously held that the names of employees taking sick leave days and the dates thereof are not excepted by section 3(a)(2). Open Records Decision No. 336 (1982). Therefore, you may not withhold the teacher service records under section 3(a)(1) or section 3(a)(2).

You claim that the employment eligibility verification, Form I-9, is required by the United States Immigration Service and contains information about the employee's immigration status. You argue that the information is subject to the employee's right to privacy. Form I-9 is governed by title 8, section 1324a of the United States Code providing in part that:

(2) Individual attestation of employment authorization

The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the [United States] Attorney General to be hired, recruited, or referred for such employment.

....

(5) Limitation on use of attestation form

A form designated or established by the [United States] Attorney General under this subsection and any information contained in or appended to such form, *may not be used for purposes other than for enforcement of this chapter* and sections 1001, 1028, 1546, and 1621 of Title 18 [governing crime and criminal investigations].

8 U.S.C. § 1324a(b) (emphasis added). Release of the requested document under the Open Records Act would be "for purposes other than for enforcement" of chapter 12 of title 8 or title 18 of the United States Code. Accordingly, we conclude that Form I-9 is confidential under section 3(a)(1) of the Open Records Act and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/le

Ref.: ID# 18948
ID# 19387

Enclosures: Marked documents